IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Bail Appl..No. 4678 of 2007()

[CRIME NO.571/2005 OF MAVELIKKARA POLICE STATION]

PETITIONER/IST ACCUSED

PRASANNAN, THEKKEKKARA VILLAGE,
KONAKAM MURI, KARUNAGAPPALLY, KOLLAM.

BY ADV. SRI.S.SUDHEESHKAR
SRI. K.SIJU

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY S.I.
OF POLICE, MAVELIKKARA POLICE STATION,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4678 of 2007

Dated this the 2nd day of August 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. He faces indictment inter alia for the offences punishable under Section 307 read with 149 I.P.C. The crux of the allegations is that the petitioner abetted the co-accused. Altogether there are seven accused persons. The learned counsel for the petitioner submits that the allegations are raised with vexatious intent. In the F.I.R, a totally different allegation is raised about the commission of the offence as such. The petitioner is not named at all. Later, the petitioner has been brought on the array of parties raising an allegation that the petitioner had abetted the other accused. All the other accused have been changed and persons who were arrayed as accused are not arrayed as accused now. The petitioner was not arrested in the course of the trial. Final report has been filed. Cognizance has been taken. Committal proceedings has been registered. According to the learned counsel for the petitioner, the allegations are factually wrong completely. Moreover, even if the entire allegations were accepted, there is nothing to indicate the commission of the offence punishable under Section 307 I.P.C. It is submitted that the complainant's party is politically powerful and exploiting such clout which they have with

the police, false and vexatious allegations are raised against the petitioner.

2. The learned Public Prosecutor submits that the final report having already been filed, the prosecution does not want to arrest the petitioner now. He may be directed to surrender before the learned Magistrate and seek regular bail. The prosecution has no objection in regular bail being granted to the petitioner.

3. After Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is now trite that the powers under Section 438 Cr.P.C can be invoked even in a case where the apprehended arrest is in execution of a non-bailable warrant issued by a court after taking cognizance. I am satisfied that this is an eminently fit case where the said dictum can and ought to be invoked.

4. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) Petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 10/08/2007.

ii) He shall be released on regular bail on condition that he executes a bond for Rs.25,000/-(Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(iv) If he were arrested prior to 10/08/2007, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 10/08/2007.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007